

ADOT File No.: IGA/JPA 09-119-I  
AG Contract No.: P0012009003923  
Project No.:ARRA-SLW-0(201)A  
Project: Pavement Preservation  
Section: Penrod Road, approx.  
4.37miles  
**TRACS No.: SS770 RRD/01C**  
**Budget Source Item No.:**  
**ARRA/Recovery Act Funds**

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
CITY OF SHOW LOW

**THIS AGREEMENT** is entered into this date November 4th, 2009, pursuant to the Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF SHOW LOW, acting by and through its MAYOR and CITY COUNCIL (the "City"). The State and the City are collectively referred to as "Parties".

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
3. Congress has authorized appropriations for the American Recovery and Reinvestment Act of 2009 (ARRA 2009) for the disbursement of funds and investment in certain projects, including but not limited to, roads, bridges, mass transit, energy efficient buildings, flood control, clean water and other infrastructure projects to save and create jobs for long term growth and stability
4. The work contemplated under this Agreement is approximately 4.37 miles of pavement preservation on Penrod Road, hereinafter referred to as the "Project". The State shall advertise, bid and award the Project, while the City will maintain upon completion of the Project.
5. Such Project lies within the boundary of the City and has been selected by the City; the survey of the Project has been completed; and the plans, estimates and specifications will be prepared and, as required, submitted by the State to the Federal Highway Administration (FHWA) for its approval.
6. The interest of the State in this project is the acquisition and distribution of ARRA/Recovery Act Funds for the use and benefit of the City and to authorize such ARRA/Recovery Act Funds for the project pursuant to Federal law and regulations. The State shall be the designated agent for the City.

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No. 31220  
Filed with the Secretary of State  
Date Filed: 11/4/09  
K Ben Z  
Secretary of State  
By: K Ben Z

7. The ARRA/Recovery Act Funds will be used for the design and construction of the project, including the construction engineering and administration cost (CE).

The current Project costs are as follows:

**TRACS No. SS770 RRD/01C:**

ARRA/Recovery Act Funds	\$ 687,372.00
LOCAL Funds	<u>-0-</u>
 *TOTAL Project Costs	 \$ 687,372.00
*(Includes CE and project contingencies)	

8. The Parties acknowledge that the eventual actual cost may exceed the estimate, and in such case, the City is responsible for any and all costs exceeding the estimate.

**THEREFORE**, in consideration of the mutual Agreements expressed herein, it is agreed as follows:

**II. SCOPE OF WORK**

1. The State will:

a. Prepare and provide design plans, specifications and other such documents and services required for the construction bidding and construction of the Project and incorporate comments from the City as appropriate.

b. On behalf of the City, perform work and prepare documents required by the FHWA to qualify certain projects for and to receive ARRA/Recovery Act Funds. Such work may consist of, but is not specifically limited to, the review and approval of the prepared environmental documents; the preparation of the analysis requirements for documentation of environmental categorical exclusion determinations; review of reports, design plans, maps, and specifications; geologic materials testing and analysis; right-of-way related activities and such other related tasks essential to the achievement of the objectives of this Agreement.

c. Upon approval by the FHWA, and with the aid and consent of the City and FHWA, proceed to advertise for, receive and open bids subject to the concurrence of the FHWA and the City. The State will enter into a contract(s) with a firm(s) to whom the award is made for the construction of the Project; administer contract(s) for the Project and make all payments to the contractor(s); and be responsible for contractor claims for additional compensation caused by the Project delays attributable to the State.

d. Enter into a Project Agreement with FHWA on behalf of the City covering the work encompassed in said construction contract and will request the maximum ARRA/Recovery Act Funds available, including construction engineering and administration costs. Should costs exceed the maximum ARRA/Recovery Act Funds available, it is understood and agreed that the City will be responsible for any excess cost not covered by ARRA/Recovery Act Funds.

e. Not be obligated to maintain said Project, should the City fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

2. The City will:

a. Upon execution of this Agreement, designate the State as authorized agent for the City.

b. Review the design documents required for construction of the Project and provide comments to the State as appropriate.

c. Certify that all necessary rights-of-way have been or will be acquired prior to advertisement for bid. Hereby also certifies that all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the Project area, shall be removed from the proposed right-of-way, or will be removed prior to the start of construction.

d. Not permit or allow any encroachments upon or private use of the right-of-way, except those authorized by permit. In the event of any unauthorized encroachment or improper use, the City shall take all necessary steps to remove or prevent any such encroachment or use.

e. Grant the State, without charge, cost or additional documents and agreements, permission to enter City lands as required to conduct all construction and pre-construction activities related to the Project, including and without limitation, temporary construction easements, or temporary right-of-entry.

f. Be responsible for any and all costs attributable to any engineering change orders requested by the City not covered by ARRA/Recovery Act Funds. The City will also be responsible for contractor claims for additional compensation caused by Project delays attributable to the City.

g. Provide for cost and, as an annual item in the City's budget, proper routine/emergency maintenance of the Project, including all of the Project components.

h. Pay the State full compensation for all penalties, assessments or sanctions of any kind resulting from any failure to comply with any ARRA/Recovery Act requirement, including but not limited to, auditing, reporting and monitoring the project and its costs.

i. Enter into an agreement with the design consultant which states that the design consultant shall provide professional services as required and requested throughout the construction phase of the Project.

j. Provide a set of as-built plans upon completion of the construction phase of the Project. An electronic version of the as-built plans shall be forwarded to Arizona Department of Transportation Local Government Section.

k. Upon completion of the Project, agree to accept and assume full responsibility of said Project in writing.

### **III. MISCELLANEOUS PROVISIONS**

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of said Project, except any provisions for maintenance/electrical power and/or landscaping maintenance shall be perpetual by the City. Further, this Agreement may be cancelled at any time prior to advertisement of the project construction contract, upon thirty days (30) written notice to the other party. It is understood and agreed that, in the event the City terminates this Agreement, the State shall in no way be obligated to maintain said Project.

2. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction Project. The City, in regard to the City's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid on behalf of the City and the fulfillment of any other responsibilities of the State as specifically set forth herein; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof shall be the liability of the City and that to the extent permitted by law, the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all costs and/or damage incurred by any of the above and from any other

damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or non performance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, or its independent contractors, the City, any of its agents, officers and employees, or its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

3. The cost of design, construction and construction engineering work under this Agreement is to be covered by the ARRA/Recovery Act Funds set aside for this Project, up to the maximum available. The City acknowledges that the eventual actual costs may exceed the maximum available amount of ARRA/Recovery Act funds, or that certain costs may not be accepted by the federal government as eligible for ARRA/Recovery Act funds. Therefore, the City agrees to furnish and provide the difference between actual costs and the ARRA/Recovery Act Funds received.

4. The State will follow reporting requirements in accordance with Section 1201 and Section 1512 of the American Recovery and Reinvestment Act of 2009.

5. This Agreement shall be filed with the Arizona Secretary of State and shall not become effective until the date of said filing.

6. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

7. To the extent applicable under law, the provisions set forth in Arizona Revised Statutes § 35-214 and § 35-215 shall apply to this Agreement.

8. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

9. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments as a result of termination under this paragraph.

10. In the event of any controversy, which may arise out of this Agreement, the Parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

11. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 S. 17<sup>th</sup> Avenue, Mail Drop 637E  
Phoenix, Arizona 85007  
(602) 712-7124  
(602) 712-3132 Fax

City of Show Low  
Attn: Public Works Director  
550 N. 9<sup>th</sup> Place  
Showlow, Arizona 85901  
(928) 532-4091  
(928) 532-4009 Fax

12. Compliance requirements for Arizona Revised Statutes § 41-4401—immigration laws and E-Verify requirement:

a. The City warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Arizona Revised Statutes § 23-214, Subsection A.

b. A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the contract, and the City may be subject to penalties up to and including termination of the Agreement.

c. The State retains the legal right to inspect the papers of any employee who works on the Project to ensure that the City or subcontractor is complying with the warranty under paragraph (a).

13. Pursuant to Arizona Revised Statutes § 35-391.06 and § 35-393.06, each Party certifies that it does not have a scrutinized business operation in Sudan or Iran. For the purpose of this Section the term "scrutinized business operations" shall have the meanings set forth in Arizona Revised Statutes § 35-391 and/or § 35-393, as applicable. If any Party determines that another Party submitted a false certification, that Party may impose remedies as provided by law including terminating this Agreement.

14. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel and that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

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IN WITNESS WHEREOF the Parties have executed this Agreement the day and year first above written.

CITY OF SHOW LOW

By

  
\_\_\_\_\_  
RICK FERNAU  
Mayor

STATE OF ARIZONA

Department of Transportation

By

  
\_\_\_\_\_  
SAM MAROUFKHANI, P.E.  
Deputy State Engineer, Development

ATTEST:

By

  
\_\_\_\_\_  
ANN KURASAKI  
City Clerk

Initial Draft 6/19/09 ghc  
Final Approval by City, changes 9/25/09 bk, ghc (Draft2)  
AG approval 10/1/09

**ATTORNEY APPROVAL FORM FOR THE CITY OF SHOW LOW**

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the CITY OF SHOW LOW, an Agreement among public agencies which, has been reviewed pursuant to Arizona Revised Statutes § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 20<sup>th</sup> day of October, 2009.

  
City Attorney

**CITY OF SHOW LOW RESOLUTION NO. R2009-45**

**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SHOW LOW, ARIZONA, AUTHORIZING THE EXECUTION OF AN ARIZONA DEPARTMENT OF TRANSPORTATION AGREEMENT FOR USE OF FUNDS AVAILABLE THROUGH THE AMERICAN RECOVERY AND REINVESTMENT ACT FOR PAVEMENT PRESERVATION ON APPROXIMATELY 4.37 MILES OF PENROD ROAD**

**RECITALS:**

**WHEREAS**, the City of Show Low is committed to maintaining Penrod Road in a safe and efficient manner; and

**WHEREAS**, the United States Congress has authorized appropriations for the American Recovery and Reinvestment Act of 2009 (ARRA) to the Arizona Department of Transportation (ADOT) for improvement projects on the state highway system throughout Arizona; and

**WHEREAS**, ADOT has allocated \$687,372 of the ARRA funds received for pavement preservation along approximately 4.37 miles of Penrod Road in Show Low; and

**WHEREAS**, the City of Show Low shall not be required to contribute funds for this project.

**ENACTMENTS:**

**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and Council of the City of Show Low, Arizona, that the City of Show Low authorizes execution of an Arizona Department of Transportation Agreement for the use of \$687,372 made available through the American Recovery and Reinvestment Act for pavement preservation along approximately 4.37 miles of Penrod Road in Show Low.


**PASSED AND ADOPTED** this 20th day of October, 2009, by the Mayor and City Council of the City of Show Low, Arizona.

  
\_\_\_\_\_  
Rick Fernau, Mayor

ATTEST:

  
\_\_\_\_\_  
Ann Kurasaki, City Clerk


APPROVED AS TO FORM:



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Morgan Brown, City Attorney



<p><b>TERRY GODDARD</b> Attorney General</p>	 <p><b>OFFICE OF THE ATTORNEY GENERAL</b> STATE OF ARIZONA</p>	<p><b>CIVIL DIVISION</b> <b>TRANSPORTATION SECTION</b> Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan.Davis@azag.gov</p>
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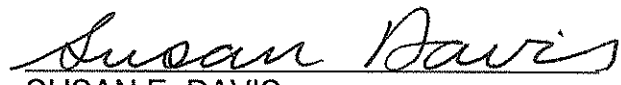
**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. P0012009003923 (**IGA/JPA 09-119-I**), an Agreement between public agencies, i.e., The State of Arizona and City of Show Low, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: November 2, 2009

TERRY GODDARD  
Attorney General

  
SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

SED:ln:604233  
Attachment